XLHC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

मामला क्रमांक Cri. App. 494/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT: (In jail)	Bhorelal alias Narbada Prasad, Son of Dheer Sai, Aged about 25 years, Occupation – agriculturist, Resident of Nandbhaan, P.S. Patna, Distt. Baikunthpur (Koriya), Chhattisgarh.
		- Versus -
	RESPONDENT:	The State of Chhattisgarh Through : Police Station – Patna, Distt. Baikunthpur (Koriya), Chhattisgarh.

Present:

Mr. A.N. Bhakta, counsel for the appellant.

Mr. D.K. Gwalre, Additional Public Prosecutor for the State/respondent.

Division Bench: **Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Dhirendra Mishra, JJ.**

ORAL JUDGMENT

(Delivered on 9th July, 2007)

L.C. BHADOO, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 21st March, 2001 passed by the 1st Additional Sessions Judge, Baikunthpur in Sessions Trial No.215/2000, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing the

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मामला क्रमांक G.A. 44/ सन् 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	murder of Rajendra Kumar, sentenced him to undergo imprisonment for life.	
2.	Case of the prosecution, in brief, is that there was a dispute between Rajendra Kumar and his family on the one hand and accused Bhorelal on the other hand regarding grazing of their crops by the cattle. On 16-4-2000 at about 9 p.m. there was some dispute between Tilu Pando & Amarsai near the house of Amarsai, therefore, Rajendra Kumar (since deceased) along with his brother Umesh Kumar (PW-1) and other persons went to that place in order to persuade them not to quarrel. When the dispute stopped, some persons were standing there, however, the accused went to his house, brought a battleaxe and attacked the deceased with the battleaxe on his neck, as a result of which his neck was cut and he died instantaneously.	
3.	Merg intimation Ex.P-2 was given in Police Station: Patna by Umesh Kumar, based on that first information report Ex.P-1 was registered. After registering the offence, the Investigating Officer left for the scene of occurrence and prepared the site plan of the place of occurrence under Ex.P-3 and site plan Ex.P-5 was prepared by the Halka Patwari. After giving notice Ex.P-6 to the Panchas, the Investigating Officer prepared inquest Ex.P-7 on the body of the deceased. Battleaxe was seized from the place of occurrence under Ex. P-8. Body of Rajendra Kumar was sent to Government Hospital, Baikunthpur under Ex.P-11, where post-mortem was conducted by Dr. D.K. Chikanjuri (PW-9) & Dr. Ashish Karan (PW-11), they prepared report Ex.P-12 and opined that cause of death is haemorrhage and neurogenic shock, the death was homicidal in nature.	

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मामला क्रमांक G.A. 444/ सन् 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	As per the report, there was an incised wound (ante-mortem in nature) present on the back of neck measuring in 5" x 3". All the nerves and spinal cord were cut. All the structures posterior to cervical vertebra were cut. Seized articles were sent for chemical examination to Forensic Science Laboratory, Sagar, under Ex.P-19. The battleaxe in question was sent to the doctor who in turn gave report Ex.P-18A in which he mentioned that the injury mentioned in the post-mortem report may be caused by the battleaxe in question.	
4.	After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Baikunthpur who in turn committed the case to the Sessions Judge, Surguja, from where learned Additional Sessions Judge, Baikunthpur received the case on transfer for trial.	
5.	The prosecution, in order to establish charge against the accused, examined 11 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent, he has been falsely implicated in the crime. He also examined one witness Lalsai in his defence.	
6.	Learned Additional Sessions Judge after hearing counsel for the parties convicted and sentenced the accused as aforementioned.	
7.	We have heard Mr. A.N. Bhakta, learned counsel for the appellant and Mr. D.K. Gwalre, learned Additional Public Prosecutor on behalf of the State/ respondent.	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	8. Mr. Bhakta has not disputed the homicidal death of Rajendra Kumar. Moreover, the eyewitnesses namely, Umesh Kumar (PW-1), Basant (PW-2), Harbansh (PW-3) & Amarsai (PW-4) who witnessed the crime in question have categorically stated that the accused attacked the deceased with battleaxe on his neck as a result of which his neck was cut, he fell down and died instantaneously. Above ocular evidence is corroborated by the medical evidence of Dr. D.K. Chikanjuri (PW-9) who has stated that on 17-4-2000 he conducted post-mortem on the body of Rajendra Kumar, there was cut injury on his neck, almost all parts of neck were cut, cause of death was haemorrhage and cutting of spinal cord, the death was homicidal in nature. Therefore, from the above evidence it is established that the death of Rajendra Kumar was homicidal in nature. 9. As far as involvement of the accused in the crime in question is concerned, Umesh Kumar (PW-1), who is brother of the deceased, has stated in his evidence that in the fateful night they heard a commotion from the side of Amarsai's house, therefore, he along with his elder brother Rajendra Kumar, Shrinath & Harbansh went near the house of Amarsai to persuade their quarrel, on their persuasion quarrel stopped. Accused Bhorelal asked his brother Rajendra that as and when he is not at his residence, Rajendra is in the habit of quarreling with his father, on which Rajendra replied that his buffalo is also spoiling their crops. The accused left the place and 5 minutes thereafter, brought a battleaxe and attacked his brother Rajendra on his neck as a result of which Rajendra fell down and died instantaneously. Above evidence of Umesh Kumar (PW-1) is corroborated by the evidence of Basant (PW-2), Harbansh (PW-3) and Amarsai (PW-4).	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

10. Learned counsel for the appellant argued that the fact that the accused went to his house and 5 minutes thereafter, he came with a Farsa, has not been mentioned in the police diary statement of Umesh Kumar (PW-1). Learned counsel also pointed out some other minor omissions.

11. We have perused the statement of Umesh Kumar (PW-1) recorded under Section 161 of the Cr.P.C. which shows that all the material facts have been disclosed by this witness in his statement under Section 161 of the Cr.P.C. Therefore, we do not find that there are material omissions or contradictions in the Court evidence and the police diary statement.

12. Moreover, other witnesses namely, Basant (PW-2), Harbansh (PW-3) and Amarsai (PW-4) have corroborated the evidence of Umesh Kumar (PW-1) and from their evidence it is clear that the accused went to his house brought the battleaxe and attacked Rajendra Kumar who was armless. The evidence of these eyewitnesses is also corroborated by the evidence of Kailash (PW-5) who has stated in his evidence that on the fateful night when he was at his residence, the accused came to his house, knocked the door and when he enquired, he disclosed that he has committed the murder of Rajendra Kushwaha by attacking with battleaxe. On hearing this, he immediately asked the accused that he has committed a heinous crime therefore, he will not save him and the accused left the place.

13. The evidence of these witnesses is also corroborated by the evidence of Dr. D.K. Chikanjuri (PW-9) who conducted post-mortem and who has stated that there was a cut injury on the back side of neck in the size of 5" x 3" and almost all parts of the neck were cut. The battleaxe in question

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

was also examined by the doctor and he gave report Ex.P-18A in which it was mentioned that the injury which was found on the body of the deceased could be caused by the battleaxe in question. Therefore, there is clear, cogent, ample and legal evidence on record to establish that the accused was the author of the crime in question and to that extent we do not find any illegality or infirmity in the judgment of the trial Court.

14. Learned counsel for the appellant also argued that the accused attacked the deceased all of a sudden, in a heat of passion and there was no intention to cause the death of Rajendra Kumar. Therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

15. On the other hand, Mr. Gwalre, learned Additional Public Prosecutor supported the judgment of the trial Court.

16. In order to appreciate the argument advanced by Mr. Bhakta, we have perused the evidence. The evidence clearly establishes the fact that there was some quarrel near the house of Amarsai where accused Bhorelal was quarreling with one Tilu Pando, the deceased along with his brother went to that side and persuaded not to quarrel, thereafter, the accused quarreled with Rajendra Kumar, he left that place, went to his house, brought the battleaxe and attacked Rajendra Kumar with the said battleaxe, resultantly, almost all parts of the neck of Rajendra Kumar were cut, he fell down and died instantaneously. Medical evidence of the doctor shows that the force with which Bhorelal attacked the deceased with battleaxe, almost all parts of his neck were cut. The attack was made with such a force that Rajendra Kumar died instantaneously. In order to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	ascertain intention of the accused, it is to be seen that the nature of the weapon used, place of the body where the injury was inflicted and the force with which the attack was made. In the present case, the accused attacked the deceased with a deadly weapon like battleaxe, that too on the neck with great force as a result of which the deceased sustained fatal injury and died instantaneously. Therefore, intention of the accused to cause the death of Rajendra Kumar was writ large and there is no illegality or infirmity in the judgment of the trial Court.	
	17. In the result, we do not find any substance in this appeal, same is liable to be dismissed and it is hereby dismissed.	
	Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge
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